

FILED

APR 08 2010

SECRETARY, BOARD OF
OIL, GAS & MINING

JIM R. SCARTH (2870)
Kane County Attorney
76 North Main Street
Kanab, Utah 84741
Telephone: (435) 644-5278
Facsimile: (435) 644-8156

BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

SOUTHERN UTAH WILDERNESS
ALLIANCE, et al,

Petitioners,

v.

DIVISION OF OIL, GAS, & MINING,
DEPARTMENT OF NATURAL
RESOURCES, STATE OF UTAH,

Respondent.

**INTERVENOR KANE COUNTY'S
OBJECTION AND RESPONSE TO
PETITIONER'S
REQUEST FOR SECOND SITE
INSPECTION**

Docket No. 2009-019

Cause C/025/0005

COMES NOW Intervenor Kane County, by and through its counsel of record, Jim R. Scarth, and objects to Petitioners' Request for Second Site Inspection herein, and respectfully moves the Board to deny Petitioners' Request, and in support thereof, states the following:

Petitioners first requested a site inspection on November 25, 2009. They subsequently withdrew their motion, stating that the permit area was inaccessible due to snow cover. After discussion between the parties, a stipulation was reached and approved whereby Petitioners were to conduct a site inspection between February 16, 2010, and March 5, 2010. It was further agreed that Petitioners would be given access to the permit area for any four week days designated by Petitioners within that time frame.

Petitioners requested and were given access to the permit area on March 2, 2010. After only one day, Petitioners abandoned their inspection activities, complaining that the presence of snow interfered with their inspection abilities. When they abandoned their inspection efforts, they had three days remaining to complete their work, pursuant to the stipulation and order. Now, for the third time, they are moving for yet another inspection. Petitioners' motion should be denied.

The presence of snow in the permit area during the months of February and March is not an unusual condition. This information concerning snow conditions was either well known by Petitioners or was easily knowable with very little investigation, i.e. a telephone call or two would certainly educate Petitioners regarding snow conditions in the permit area. Instead, they scheduled the inspection apparently with no effort to first determine snow conditions, then abandoned that effort after one day. Apparently, they made no effort to use the snowmobile which was present nor did they use snowshoes to hike to site locations.


The real question raised by Petitioners' inspection efforts is why Petitioners have taken so much time and effort to demand the site inspection, but so little time and effort to actually inspect the site. Intervenor suggests that the reason for this inconsistency lies in the reason Petitioners challenged the issuance of the Petition in the first place. It was challenged for no other reason than the fact that the permit was actually issued.

It is now obvious that Petitioners attacked the permit process not because of any knowledge or information that the permit procedure was not properly followed, or that supporting data was flawed, but simply because the permit was issued. To use this "shoot now and ask questions later" approach is a misuse of the procedural safeguards which are in place to allow a challenge to the granting of a permit.

It is not right to allow Petitioners to stop a process which has been expensive and time-consuming for many people, with no other evidence or support for the challenge than has been shown to date. For Petitioners to drag their feet and prolong the delay by making what is in effect a third request for inspection is unconscionable. This is particularly true when it becomes obvious that Petitioners have no support for the various claims being made in attacking the granting of this permit. Petitioners are dealing with that lack of support by attempting to extend the time period in which they may try to find something to support claims which were made without an adequate basis. Petitioners' Motion should be denied.

WHEREFORE, Kane County respectfully requests that the Board issue an order denying Petitioners' Request for Second Site Visit at the Coal Hollow Mine, located in Alton, Kane County, Utah.

DATED April 6, 2010.


Jim R. Scarth
Kane County Attorney

CERTIFICATE OF SERVICE

On April 6, 2010, I FILED this INTERVENOR KANE COUNTY'S OBJECTION AND RESPONSE with Julie Ann Carter, Secretary of the Board of the Board of Oil, Gas, and Mining, 1594 West North Temple, Suite 1210, Salt Lake City, Utah, 84116, and mailed a copy, first-class postage prepaid, to:

Bennett E. Bayer, Esq.
Landrum & Shouse LLP
106 West Vine Street, Suite 800
Lexington, KY 40507

Denise A. Dragoo
James P. Allen
Snell & Wilmer, L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

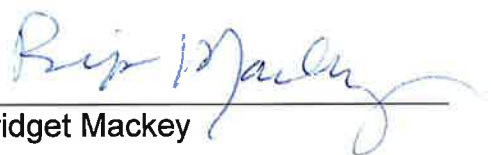
Stephen Bloch, Esq.
Tiffany Barz, Esq.
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

Walton Morris, Esq.
Morris Law Office, P.C.
1901 Pleasant Lane
Charlottesville, VA 22901

Sharon Buccino, Esq.
Natural Resources Defense Council
1200 New York Ave, N.W., Suite 400
Washington, DC 20005

Michael Johnson, Esq.
Assistant Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857

Steven F. Alder, Esq.
Assistant Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857


Bridget Mackey

KANE COUNTY ATTORNEY

76 North Main
Kanab, Utah 84741

RECEIVED

APR 08 2010

DIV. OF OIL, GAS & MINING

**JULIE ANN CARTER
BOARD OF OIL, GAS AND MINING
1594 WEST NORTH TEMPLE, STE. 1210
SALT LAKE CITY, UT 84116**



德意志人與德意志人

